

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF MOUNTAINEER CELLULAR GENERAL)	
PARTNERSHIP FOR THE ISSUANCE OF A)	CASE NO.
CERTIFICATE OF PUBLIC CONVENIENCE AND)	94-529
NECESSITY TO CONSTRUCT A TOWER)	

O R D E R

On January 17, 1995, Mountaineer Cellular General Partnership ("Mountaineer Cellular") submitted an application seeking a Certificate of Public Convenience and Necessity to build and operate a cellular radio telecommunications system for Rural Service Area No. 10 ("RSA No. 10"). On January 26, 1995, Mountaineer Cellular cured a deficiency, and its application was accepted as filed. RSA No. 10 includes Breathitt, Estill, Jackson, Knott, Lee, Letcher, Owsley, Perry, Powell, and Wolfe counties. Mountaineer Cellular has requested authorization to construct a cell site in Perry County. Mountaineer Cellular was previously granted authority to operate a cellular radio telecommunications system in RSA No. 10 in Case No. 91-002.¹

The proposed cell site consists of a 300-foot or less self-supporting antenna tower to be located .5 miles southwest of the intersection of State Route 15 and State Route 28, Perry County,

¹ Case No. 91-002, The Application of Mountaineer Cellular General Partnership for the Issuance of Certificate of Public Convenience and Necessity to Provide Domestic Public Cellular Radio Telecommunications Service to the Public and for Establishment of Initial Rates.

Kentucky ("the Grapevine cell site"). The coordinates for the Grapevine cell site are North Latitude 37° 20' 18.3" by West Longitude 83° 16' 42.6".

Mountaineer Cellular has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the Grapevine cell site. Based upon the application, the design of the tower and foundation appears to meet the criteria of the Building Officials and Code Administrators International, Inc. National Building Code with reference to earthquakes, winds, and tornadoes.

Pursuant to KRS 100.324(1), the Grapevine cell site's construction is exempt from local zoning ordinances; however, Mountaineer Cellular notified the Perry County Judge/Executive of the pending construction. Mountaineer Cellular has filed applications with and received approvals from the Federal Aviation Administration and the Kentucky Airport Zoning Commission for the construction and operation of the Grapevine cell site.

Mountaineer Cellular has filed notices verifying that each person who owns property or who resides within 500 feet of the Grapevine cell site has been notified of the pending construction. The notice solicited any comments and informed the property owners or residents of their right to intervene. On January 11, 1995, the Commission received a letter from Enterprise Coal Company. On January 26, 1995, the Commission informed Enterprise Coal of its right to intervene and ordered Mountaineer Cellular to respond to the concerns of Enterprise Coal. On July 11, 1995, Enterprise Coal

informed the Commission that it no longer wished to participate. To date, no intervention requests have been received.

Pursuant to KRS 278.280, the Commission is required to determine proper practices to be observed when it finds, upon complaint or on its own motion, that the facilities of any utility subject to its jurisdiction are unreasonable, unsafe, improper, or insufficient. To assist the Commission in its efforts to comply with this mandate, Mountaineer Cellular should notify the Commission if it does not use this antenna tower to provide cellular radio telecommunications services in the manner set out in its application and this Order. Upon receipt of such notice, the Commission may, on its own motion, institute proceedings to consider the proper practices, including removal of the unused antenna tower, which should be observed by Mountaineer Cellular.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Mountaineer Cellular should be granted a Certificate of Public Convenience and Necessity to construct and operate the Grapevine cell site in RSA No. 10 under its previously approved tariff.

IT IS THEREFORE ORDERED that:

1. Mountaineer Cellular be and it hereby is granted a Certificate of Public Convenience and Necessity to construct and operate the Grapevine cell site.
2. Mountaineer Cellular shall immediately notify the Commission in writing, if, after the antenna tower is built and

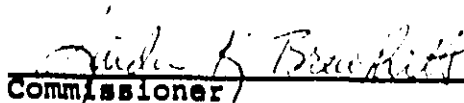
utility service is commenced, the tower is not used for a period of three months in the manner authorized by this Order.

Done at Frankfort, Kentucky, this 27th day of July, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director